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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/304,841	05/05/1999	MASAYASU KOYAMA	Q54287	1233

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EXAMINER
PATTERSON, MARC A

ART UNIT	PAPER NUMBER
1772	

DATE MAILED: 10/01/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

A-817

Office Action Summary	Application No. 09/304,841	Applicant(s) KOYAMA ET AL.	
	Examiner Marc A Patterson	Art Unit 1772	

-- The MAILING DATE f this communication appears on the cover sheet with the correspondence address --

Peri d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *6/28/02* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4,6,8 and 10-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4,6,8 and 10-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

REPEATED REJECTIONS

1. The 35 U.S.C. 112, second paragraph rejection of Claim 1 and 35 U.S.C. 103(a) rejection of Claims 1, 4, 6, 8 and 10 – 15 as being unpatentable over Otaki et al. (U.S. Patent No. 5,908,676), of record on page 2 of the previous Action, is repeated.

ANSWERS TO APPLICANT'S ARGUMENTS

2. Applicant's arguments regarding the 35 U.S.C. 112, second paragraph rejection of Claim 1 and 35 U.S.C. 103(a) rejection of Claims 1, 4, 6, 8 and 10 – 15 as being unpatentable over Otaki et al. (U.S. Patent No. 5,908,676), of record on page 2 of the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues on page 3 that the term 'degree of flatness' has been defined as meaning that the aspect ratio of a long axis to a short axis of a section of an absorbing agent particle is 0.6 or less. However, the definition is not discussed in the specification. Furthermore, the definition is difficult to understand, as the first paragraph of page 13 specifically makes reference to the 'degree of flatness' as a quantity which can be increased. Finally, if the term 'degree of flatness' is entirely defined by a specific range of aspect ratio, and the term 'compression degree' is defined by 'degree of flatness,' what is the difference between 'compression degree' and aspect ratio?

Applicant also argues, on page 5, that there is no description or suggestion in Otaki et al. concerning aspect ratio. However, as stated on page 2 of the previous Action, Otaki et al disclose an average particle size of 50 μm or less. Otaki et al also disclose a fibrous particle having a

circular cross section, with a diameter of 50 μm (column 5, lines 40 – 61). Otaki et al therefore disclose an aspect ratio of 1. Therefore, the aspect ratio, and therefore whether the particle is flat, would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end use of the product. It therefore would be obvious for one of ordinary skill in the art to vary the aspect ratio, since the aspect ratio would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Otaki et al. *In re Boesch and Slaney, 205 USPQ 215 (CCPA 1980).*

Applicant also argues, on page 5, that aspect ratio cannot be determined through routine optimization, because page 46, lines 26 – 35 of the specification discloses a reducing iron powder having a particle diameter, but an aspect ratio in which more than 60% of the particles exhibited an apparent aspect ratio of not smaller than 0.6; thus, Applicant argues, there is no relationship between particle diameter and aspect ratio which would allow one of ordinary skill in the art to determine aspect ratio through routine optimization. However, as stated above, Otaki et al do not only disclose particle diameters; the diameters define an aspect ratio of 1, which would readily be determined through routine optimization by one having ordinary skill in the art.

Applicant also argues, on page 6, that column 8, lines 51 – 62 of Otaki et al do not disclose a multilayer distributed structure containing an oxygen absorbing agent; the layer which is disclosed in column 8, lines 51 – 62 of Otaki et al, Applicant argues, instead discloses layer (I), the layer having oxygen permeability. However, layer (I) does contain the oxygen absorbing agent, as it is adjacent to the layer which comprises the oxygen absorbing agent, layer (II)(column 8, lines 1 – 17). Furthermore, as stated on page 2 of the previous Action, layer (II)

comprises a substantially non – compatible polymer blend, since at least one component is partially crosslinked; the claimed aspect of the layer which comprises the oxygen – absorbing agent comprising a multilayer distributed structure therefore reads on Otaki et al.

Applicant also argues, on page 6, that dry milling of sodium chloride and spraying of sodium chloride on iron powder are compared in the specification, in Example 7 and Comparative Example 7-1. However, neither example describes spraying of sodium chloride, so that no direct comparison can be made. Furthermore, addition of metal halide to iron powder by dry milling is disclosed by Otaki et al (column 6, lines 11 – 24).

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.
Marc Patterson
Art Unit 1772

HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

9/30/01